IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE CRIMINAL JURISDICTION

CRIMINAL WRIT PETITION NO.1460 OF 2006

Mr.Melroy Pinto .... Petitioner

versus

The State of Maharashtra & ors .. Respondents

Mr.K.R.Iyengar,Advocate for Petitioner

Mr.A.N.Pathan, for BMC

Ms S.D.Shinde, APP for State

CORAM : J.N.PATEL AND

SMT.ROSHAN DALVI, JJ

DATED : 16th October, 2006

P.C.

1. On 7th October, 2006 this Court was informed that the investigating agency has requested the Municipal Commissioner, Municipal Corporation of Greater Mumbai for granting sanction but there is

no response in the matter. We have observed that the Municipal Comissioner should take a decision in the matter of granting sanction "to prosecute the persons against whom the Investigating Officer finds sufficient material but, there is no response." The mistake has crept in because of the statement made by the learned A.P.P. Now it is clarified that State is required to file the charge sheet against the petitioner under the M.R.T.P.Act. Therefore, the order stands modified by deleting part of the order which is quoted above into inverted comma and underlined.

2. We are informed by the learned counsel for the Municipal Corporation that the Municipal Commissioner has already accorded sanction and the learned A.P.P. submits that on receiving sanction, the charge sheet would be filed in the Court of Additional Chief Metropolitan Magistrate, 42nd Court, at Shindewadi, Dadar, Mumbai and the respondents can proceed accordingly.

3. It has been also submitted on behalf of the petitioner that the additions and alterations carried out by the petitioner without seeking permission from the competent authority i.e.

Municipal Corporation can also be compounded.

4. We grant liberty to the petitioner to apply to the competent authority for compounding and obtaining the post-dated sanction for the additions and alterations if the same is permitted within the building bylaws, rules and regulations.

5. If such an application is made, the competent authority will put the society on notice and after considering their say take a decision in the matter in accordance with law.

6. Another grievance made by the petitioner is that the petitioner has been prosecuted for breach of the provisions of the B.M.C.Act as well as M.R.T.P.Act for the same transction. We make it clear that while filing the charge sheet, two separate charge sheets need not be filed i.e. for offences under B.M.C.Act and another for offences under the M.R.T.P.Act. The learned Magistrate can frame distinct charges for the offences committed under the two provisions in the course of same transaction and proceed with them in accordance with law as it violates the provisions of the two Acts which constitute distinct offences allegedly

committed by the petitioner.

7. In view of the fact that investigation is over and sanction is granted, our aforesaid observations sufficiently protects the rights of the parties and therefore, nothing survives in the matter. The petitioner can very well take up the necessary pleas in their defence available to them under the law for the alleged violation, alterations and unauthorised constructions, if any, carried out by them for which they are charge sheeted.

Petition is disposed of accordingly.

(Smt R.S.Dalvi,J) **(J.N.Patel,J)**